

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIE E. TATUM,
Petitioner,

No. C 08-814 TEH (PR)

ORDER TO SHOW CAUSE

vs.

BEN CURRY, Warden,
Respondent.

Petitioner, a California state inmate at Soledad State Prison, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the September 15, 2005, decision of the California Board of Parole Hearings (“BPH”) to deny him parole. Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

BACKGROUND

According to the petition and the attachments thereto, Petitioner was convicted in Los Angeles County Superior Court in 1982 of two counts of kidnapping and robbery with the use of a deadly weapon and was sentenced to a term of seven years-to-life.

Petitioner challenges the BPH’s decision finding him unsuitable for parole after his twelfth parole consideration hearing on September 15, 2005. According to the petition, on June 29, 2006, Petitioner filed a state petition for writ of habeas corpus in the Los Angeles County Superior Court, which denied the petition on April 10, 2007. Pet. Ex. D. On July 17, 2007, Petitioner filed a petition for a writ of habeas corpus in the Court of

1 Appeal, which denied relief. Petitioner filed a petition for review in the California
 2 Supreme Court, which denied review on December 12, 2007.

3 DISCUSSION

4 A. Standard of Review

5 The Court may entertain a petition for a writ of habeas corpus “in behalf of a
 6 person in custody pursuant to the judgment of a State court only on the ground that he is
 7 in custody in violation of the Constitution or laws or treaties of the United States.” 28
 8 U.S.C. § 2254(a).

9 It shall “award the writ or issue an order directing the Respondent to show cause
 10 why the writ should not be granted, unless it appears from the application that the
 11 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

12 B. Legal Claims

13 Petitioner seeks federal habeas corpus relief from the BPH’s decision finding him
 14 not suitable for parole on the following grounds: 1) there was not some evidence in the
 15 record showing that Petitioner is a current threat and danger to society; 2) Petitioner
 16 invoked his right not to discuss the commitment offense and his refusal to discuss the
 17 offense was improperly held against him; 3) Petitioner had minimal criminal history and
 18 no prior convictions; 4) the record does not support the BPH’s conclusion that Petitioner
 19 has not participated in self-help programming; 5) the record does not support the finding
 20 that Petitioner was uncooperative and combative at the hearing, leading to Petitioner’s
 21 removal from the hearing. Liberally construed, Petitioner’s claims appear colorable under
 22 § 2254 and merit an answer from Respondent. See Biggs v. Terhune, 334 F.3d 910, 914-
 23 15 (9th Cir. 2003) (finding that initial refusal to set parole date for prisoner with fifteen-
 24 to-life sentence implicated prisoner’s liberty interest in release on parole which cannot be
 25 denied without adequate procedural due process protections).

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CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.


2. Respondent shall file with the Court and serve on Petitioner, **within sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

3. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on Respondent **within thirty (30) days** of his receipt of the answer.

4. Petitioner is reminded that all communications with the Court must be served on Respondent by mailing a true copy of the document to Respondent's counsel. Petitioner must also keep the Court and all parties informed of any change of address.

SO ORDERED.

DATED: 07/01/08


THELTON E. HENDERSON
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

WILLIE EARN TATUM JR,
Plaintiff,

Case Number: CV08-00814 TEH

CERTIFICATE OF SERVICE

v.


BEN CURRY et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 2, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Willie E. Tatum #: C-55580
California Training Facility - (C.T.F.)
California State Prison-Soledad
P.O. Box 689
East Dorm 90/Low
Soledad, CA 93960

Dated: July 2, 2008


Richard W. Wieking, Clerk
By: R.B. Espinosa, Deputy Clerk